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Attorneys for Defendant APPLE INC.

15 UNITED STATES DISTRICT COURT  
16  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18  
19 OAKLAND DIVISION

20 EPIC GAMES, INC.,

21 Plaintiff, Counter-  
22 defendant

23 v.

24 APPLE INC.,

25 Defendant,  
26 Counterclaimant.

27 Case No. 4:20-cv-05640-YGR-TSH

28 **DECLARATION OF RACHEL S. BRASS IN  
SUPPORT OF DEFENDANT APPLE INC.'S  
ADMINISTRATIVE MOTION TO  
PARTIALLY SEAL ITS FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

1 Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar  
 3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for  
 4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary  
 5 and confidential information, based on my personal experience representing Apple.<sup>1</sup> I have personal  
 6 knowledge of the facts stated below and, if called as a witness, I could and would testify competently  
 7 thereto. I submit this declaration in support of Apple’s Administrative Motion to Partially Seal Its  
 8 Findings of Fact and Conclusions of Law.

9 2. Federal Rule of Civil Procedure 26(c), generally, provides the “compelling reasons”  
 10 standard for the purposes of sealing documents attached to a dispositive motion or presented at trial.  
 11 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The test applied is  
 12 whether a party has articulated compelling reasons “that outweigh the general history of access and the  
 13 public policies favoring disclosure.” *Id.* at 1178–79.

14 3. Apple operates in an intensely competitive marketplace. It occupies a unique position  
 15 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate  
 16 concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive,  
 17 proprietary information in order to gain competitive advantage. As such, Apple takes extensive  
 18 measures to protect the confidentiality of its proprietary information.

19 4. The Court has “broad latitude” “to prevent disclosure of materials for many types of  
 20 information, including, *but not limited to*, trade secrets or other confidential research, development, or  
 21 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)  
 22 (emphasis in original).

23  
 24  
 25 1 Courts in this District routinely grant motions to seal on the basis of declarations of counsel  
 26 submitted pursuant to Local Rule 79-5. *See, e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-  
 27 1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-  
 28 EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-  
 EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of  
 proprietary information, but if the Court deems this declaration insufficient, Apple respectfully  
 requests that it be permitted to file a further declaration supporting filing under seal.

1       5.     The Court has expressed a desire for these proceedings to be public. To that end, Apple  
 2 has carefully reviewed its Proposed Findings of Fact and Conclusions of Law and now proposes only  
 3 to seal information which has been previously ordered sealed by the Court.

4       6.     Throughout the trial in this matter, I met and conferred in good faith with counsel for  
 5 Epic, including by telephone, in an effort to narrow the documents and testimony that the parties  
 6 propose to maintain under seal. This process resulted in narrowing the amount of designated  
 7 confidential material and consequently reduced the need for provisional sealing (pursuant to Local Rule  
 8 79-5(e)) of material designated by the other party as confidential. The redacted versions of the Findings  
 9 of Fact and Conclusions of Law reflect the results of that negotiation.

10      7.     However, the parties have not had an opportunity to inspect the opposing party's  
 11 Findings of Fact and Conclusions of Law. In addition, the parties have requested the provisional  
 12 sealing of certain information in which third parties may have confidentiality interests (whether the  
 13 party's information was produced by such third party or by one of the parties). It is thus not feasible  
 14 at this time for the parties to execute a stipulation of sealing.

15      8.     Below is a chart detailing the specific items of Apple's that are sealable for the reasons  
 16 explained herein, highlighted in yellow in the attached unredacted version.

Paragraph of Proposed Findings of Fact	Reason for Redaction
118.1	Previously ordered sealed. <i>See</i> Dkt. 613.
138	Previously ordered sealed. <i>See</i> Dkt. 613.
225	Previously ordered sealed. <i>See</i> Dkt. 614.
343	Previously ordered sealed. <i>See</i> Dkt. 613, 614.
347	Previously ordered sealed. <i>See</i> Dkt. 715.
360	Previously ordered sealed. <i>See</i> Dkt. 715.
363	Previously ordered sealed. <i>See</i> Dkt. 715.
399.6	Previously ordered sealed. <i>See</i> Dkt. 715.
481	Part of sealed trial transcript.
491	Part of sealed trial transcript.
498	Previously ordered sealed. <i>See</i> Dkt. 614.
590	Previously ordered sealed. <i>See</i> Dkt. 715.
669	Previously ordered sealed. <i>See</i> Dkt. 614.

1       9. Pursuant to Local Rule 79-5(e), below is a list reflecting the information designated by  
 2 other parties as confidential, on which Apple takes no position, highlighted in blue in the attached  
 3 unredacted version:

Paragraph of Findings of Fact	Reason for Redaction
142	Previously ordered sealed. <i>See</i> Dkt. 614.
143	Previously ordered sealed. <i>See</i> Dkt. 614.
165.4	Previously ordered sealed. <i>See</i> Dkt. 715.
232	Previously ordered sealed. <i>See</i> Dkt. 564.
249.19.1	Previously ordered sealed. <i>See</i> Dkt. 715.
249.19.3	Previously ordered sealed, <i>see</i> Dkt. 613 and 564, and part of sealed trial transcript.
267.1	Previously ordered sealed. <i>See</i> Dkt. 613.
271.2	Part of sealed trial transcript.
273.1	Part of sealed trial transcript.
332	Information derived from DX-4909 which was previously ordered sealed. <i>See</i> Dkt. 547.
344.1	Previously ordered sealed. <i>See</i> Dkt. 547.
355.2	Portions previously ordered sealed, <i>see</i> Dkt. 715, and portion related to DX-3437 which the Court indicated it was inclined to seal, <i>see</i> Dkt. 564.
356	Samsung previously moved to seal DX- 4335, and portions of DX-4457 were previously ordered sealed. <i>See</i> Dkt. 564.
363	Previously ordered sealed. <i>See</i> Dkt. 614.
372	Epic previously moved to seal. <i>See</i> Dkt. 731.
380.1	Previously ordered sealed, <i>see</i> Dkt. 547, and part of sealed trial transcript.
381	Previously ordered sealed as to part, <i>see</i> Dkt. 547 and 715, Court indicated it was inclined to seal as to part, <i>see</i> Dkt. 547, and Epic or Third Party designation.
399.2	The Court indicated it was inclined to seal. <i>See</i> Dkt. 547.
399.3	The Court indicated it was inclined to seal. <i>See</i> Dkt. 547.
477	Previously ordered sealed, <i>see</i> Dkt. 613, and part of sealed trial transcript.
505	Previously ordered sealed. <i>See</i> Dkt. 547.
518.2	Epic previously moved to seal. <i>See</i> Dkt. 731.
534.3	Previously ordered sealed. <i>See</i> Dkt. 613.
536	Previously ordered sealed. <i>See</i> Dkt. 547
593	Previously ordered sealed. <i>See</i> Dkt. 614.
657	Part of sealed trial transcript.
697.1	Previously ordered sealed, <i>see</i> Dkt. 613, and part of sealed trial transcript.
Paragraph of Conclusions of Law	Reason for Redaction
42	Information derived from DX-3918 which was previously ordered sealed. <i>See</i> Dkt. 564.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct and that this Declaration was executed on May 28, 2021 at San Francisco, California.

3 /s/ Rachel S. Brass  
4 Rachel S. Brass  
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